IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 138 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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J.J. ORGANISATION

Versus

ANUPAM INDUSTRIES LTD.

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Appearance:

1. COMPANY PETITION No. 138 of 2003

MR PK PADALIA for Petitioner No. 1

DHARMESH D NANAVATY for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 25/08/2004

ORAL JUDGEMENT

The petitioner has filed this petition u/s.433(e)

read with Section 434 of the Companies Act, 1956 for winding-up of the respondent-Company.

2. It is the case of the petitioner that the respondent-company has approached the petitioner in June, 2002 for supply of electrical and engineering equipments, spare parts and the petitioner had started to supply the same as per its instructions from time to time. That the petitioner has supplied the goods to the tune of Rs.3,31,152.45 Ps. against which the respondent-company has issued a cheque in favour of the petitioner amounting to Rs.1,29,780/- towards part payment. The said cheque was deposited in the petitioner's bank account and the same was returned uncleared with an endorsement that the funds are insufficient in the company's account.

3. The petitioner thereafter issued a statutory notice through its advocate on the respondent-company. The said notice was duly served on the respondent-company and yet no payment was made by the respondent-company. The petitioner has also filed criminal complaint against the respondent-company and its Directors before the Court of Metropolitan Magistrate, Ahmedabad, u/s.138 of the Negotiable Instruments Act. Since the company has failed and neglected to pay its outstanding dues to the petitioner, the present petition is filed before this Court.

4. Mr. P.K.Padalia, the learned advocate appearing for the petitioner has submitted that there was no dispute about the goods having been received by the respondent-company. There was also no dispute about the fact that before filing the present petition before this Court, the petitioner has issued the statutory notice on the respondent-company at its registered office and the said notice was duly served. After filing of this petition before this Court, notice was issued on 29th April, 2003 and the same was duly served on the respondent-company. This Court has passed an order on 9/5/2003 admitting the petition. However, with a view to give an additional opportunity to the respondent-company, this Court has directed the office to serve the order of admission to the respondent-company. After service of order of admission on the respondent-company, Mr.Dharmesh D.Nanavati, learned advocate appeared on behalf of the respondent-company. This Court has observed in its order dated 26/8/2003 that since the respondent-company has not filed any reply to the petition, the order of advertisement as to the winding up petition and final hearing was required to be published in two daily newspapers of Ahmedabad edition namely "Sambhav"

(Gujarati Daily) and "Asian Age" (English Daily) on or before 11th September, 2003 indicating the date of final hearing as on 30th September, 2003. The Court has dispensed with the publication of advertisement in the Government Gazatte.

5. Pursuant to the aforesaid order, the advertisement was published in the two newspapers and affidavit of publication was also filed before this Court on 8th September, 2003 and after the publication of the advertisement, Mr.Dharmesh D.Nanavati, learned advocate appearing for the respondent-company has filed a note before the Registrar of this Court stating that he has already informed the respondent-company on 10/8/2004 stating that due to his personal difficulties he was retiring and discontinued as a lawyer in the said company petition and requested the Registrar to delete his name as a lawyer appearing for respondent-company in the said petition. He has also placed on record a copy of the letter written to the Company. The petition thereafter came up for hearing on 13th August, 2004 and taking into consideration, the intimation given by Mr.D.D.Nanavati to the respondent-company, the Court has adjourned the matter to today i.e. 25th August, 2004 and it was made clear that if nobody appears on behalf of the respondent-company, appropriate order would be passed.

6. Today when the matter was called out it was pointed that nobody appears on behalf of the respondent-company. Since the petition is already admitted long back and order of advertisement was also passed there is no need to pass a fresh order of admission or advertisement. The dues of the petitioner are admitted and the respondent-company has failed and neglected to discharge its liabilities. The Company has discontinued its business activities and it is closed since long. It is not in the interest of either shareholders or creditors to allow such company to continue its business activities even if the same is alleged to have been continued.

7. Taking over all view of the matter and after having considered the memo of the petition as well as the documents attached therewith and after taking into consideration the submission made by the learned advocate appearing for the petitioner, the Court is of the view that the respondent-company has lost its financial substratum and has failed to discharge its liabilities. It is, therefore, required to be wound up and accordingly, the Company is ordered to be wound up. The Official Liquidator attached to this Court is hereby

appointed as the Liquidator of the respondent-company and he is directed to take charge of the assets of the Company. The Official Liquidator is further directed that before appointing the valuer for the purpose of taking inventory of the assets of the Company and/or before appointing the security guards, he shall take prior permission of this Court.

8. With the aforesaid directions and observations, this Company Petition is, accordingly, allowed with no order as to costs.

(K.A.Puj, J.)
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